IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Amba Lal Vs. Smt. Sohni

S.B.CR.MISC. PETITION NO.500/2006

DATE OF ORDER :: November 21, 2006

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.B.L.Choudhary, for the petitioner.

BY THE COURT:

By the instant criminal misc. petition under section 482 Cr.P.C., the petitioner has challenged the order dt. 24.1.2006 passed by the Sessions Judge, Rajsamand (for short 'the revisional court' hereinafter), whereby the revision petition filed by the non-petitioner against the order dt. 2.5.2005 passed by the Judicial Magistrate, Railmagra (for short 'the trial court' hereinafter) was dismissed and the revisional court while allowing the application filed by the non-petitioner under section 125 Cr.P.C., granted monthly allowance of maintenance at the rate of Rs.500/- per month in favour of non-petitioner and

against the petitioner.

I have heard learned counsel for the petitioner. Carefully gone through the orders passed by the trial court as well as by the revisional court.

It is contended by the learned counsel for the petitioner that the non-petitioner No.2 had a living spouse namely Roshan Lal and without there being any dissolution of marriage with Roshan Lal, the non-petitioner is not entitled for maintenance. He has relied on a decision of Supreme Court in Savitaben Somabhai Bhatiya vs. State of Gujarat & Ors., **(2005) SCC 636** and the decisions of this Court in Smt. Savitri Devi vs. Smt. Manorama Bai & Ors., **AIR 1998 Madhya Pradesh 114** and in Edamma vs. Hussainappa, **AIR 1965 Andhra Pradesh 455.**

In Savitaben Somabhai Bhatiya vs. State of Gujarat & Ors. (supra) while considering the provisions of section 125 Cr.P.C. and expression "wife", the Apex Court held that expression "wife" as per section 125 Cr.P.C. refers to only legally married wife considering the earlier judgment in Dwarika Prasad Satpathy vs. Bidyut Prava Dixit, **(1999) 7 SCC 675,** wherein the Hon'ble Supreme Court held that the validity of the marriage for the purpose of summary proceedings under Section 125 of the

Code is to be determined on the basis of the evidence brought on record by the parties. The standard of proof of marriage in such proceedings is not as strict as is required in a trial of offence under Section 494 of the Indian Penal Code, 1860 (in short "IPC"). If the claimant in proceedings under section 125 succeeds in showing that she and the respondent have lived together as husband and wife, the court has to presume that they are legally wedded spouses, and in such a situation one who denies the marital status can rebut the presumption. Once it is admitted that the marriage procedure was followed then it is not necessary to further probe as to whether the said procedure was complete as per Hindu rites, in the proceedings under section 125 of the Code. It is to be noted that when the respondent does not dispute the paternity of the child and accepts the fact that marriage ceremony was performed though not legally perfect, it would hardly lie in his mouth to contend in proceedings under Section 125 of the Code that there was no valid marriage as essential rites were not performed at the time of the said marriage. The provision under Section 125 cannot be utilised for defeating the rights conferred by the legislature on the destitute women, children or parents who are victims of social environment. The provision is a measure of social justice and as noted above, specially enacted to protect women and children and falls within the constitutional sweep of Article 15(3)

reinforced by Article 39 of the Constitution.

The other judgments relied on by the learned counsel for the petitioner turn on their own facts and have no application and, therefore, are of no help to the petitioner. The petitioner on an application filed by the non-petitioner No.2 under section 125 Cr.P.C., wherein she categorically pleaded that she married to the petitioner on 30.6.2001 and since then she has been living with the non-petitioner as his wife discharging the marital obligation. This fact has not been disputed by the petitioner in his reply to the application, wherein he admitted that he contracted "Nata Marriage" with non-petitioner No.2 on 30.6.2001 according to the Hindu rites and she is his wife by "Nata". In view of the admission before the trial court, a specific question was put to the witness as to whether the earlier marriage with Roshan Lal has been dissolved or not. She categorically stated that the marriage was dissolved by custom. So is the statement of her father Chunni Lal, who stated that non-petitioner No.2 married to the petitioner and as such the non-petitioner No.2 is the wife of the petitioner. The petitioner having sufficient means failed to maintain and neglected the non-petitioner No.2.

Considering the provisions of section 125 Cr.P.C. as also

keeping in view the decision of the Hon'ble Supreme Court in Dwarika Prasad Satpathy vs. Bidyut Prava Dixit (supra), in my view, the revisional court was justified in allowing the application under section 125 Cr.P.C. filed by the non-petitioner No.2 and the revision as also in granting monthly allowance of maintenance at the rate of Rs.500/- per month in favour of non-petitioner No.2. The amount of maintenance awarded by the trial court cannot be said to be on higher side.

The petition is, therefore, dismissed.

[H.R.PANWAR],J.

m.asif/-